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other party. *Kadish v. Young*, 108 Ill. 170; *Johnston v. Milling*, 16 Q. B. D. 460. The act must be of such a nature as necessarily to prevent the other party from performing, on his part, according to the terms of the agreement. *Dubois v. Canal Co.*, 4 Wend. 284. But a refusal to make a certain payment under a contract because of a dispute as to whether it is due will not authorize the other party to rescind. *Winchester v. Newton*, 2 Allen 492. The refusal to perform must be acted upon promptly or within a reasonable time. *Holbrook v. Burt*, 22 Pick. 546; *Kingsley v. Wallis*, 14 Me. 57. When one party gives notice of intention to abandon the contract the other party may bring an action before the day set for the completion of the contract arrives. *Follansbee v. Adams*, 86 Ill. 13.

CONTRACTS—FRAUDULENT BREACH—EXEMPLARY DAMAGES.—*WILBORN v. DIXON*, 49 S. E. 232 (S. C.).—*Held*, that where land is conveyed to secure a debt, with an agreement for reconveyance, and on payment the grantor fraudulently refuses to reconvey, he may be made to respond in exemplary as well as compensatory damages. Woods, J., *dissenting*.

There seems to be no authority in support of this case. Exemplary damages may be allowed for a breach of a promise to marry if defendant has been guilty of fraud, deceit, or evil motive, *Jacoby v. Stark*, 205 Ill. 34; also in an action on bond of plaintiff in garnishment, where it appears that the process of garnishment was vexatious, *Hays v. Anderson*, 57 Ala. 374. In no other cases are such damages recoverable for mere breach of contract, *Houston & T. C. Ry. Co. v. Shirley*, 54 Tex. 125; not even if it be a refusal to pay money due and a conversion thereof with intent to oppress, *Lexington Ry. Co. v. Fair*, 25 Ky. L. R. 2243; nor where the motive for the breach is fraudulent, *Sutherland Dam.*, (2nd ed.), Sec. 99; it would greatly increase the intricacy and uncertainty of such actions. *Houston & T. C. Ry. Co. v. Shirley*, *supra*. In case of breach through negligence or fraud, no more can be recovered as damages than will fully indemnify the plaintiff for losses. *Ryder v. Thayer*, 3 La. Ann. 149.

CORPORATION—COMPENSATION OF PRESIDENT—IMPLIED CONTRACT.—*LOWE v. RING*, 101 N. W. 698. (Wis.).—*Held*, that the president of a corporation cannot sue on an implied contract to enforce a claim for services rendered as such officer and with the expectation of pay, where he is a stockholder or director.

It has been held that the president of a corporation may recover compensation for services rendered with expectation of pay, although there is no express contract to that effect. *Rosborough v. Shasta R. C. Co.*, 22 Cal. 557; that he may recover what his services are reasonably worth, *Nat. Loan Co. v. Rockland Co.*, 94 Fed. 335, and that notwithstanding the fact that he is a stockholder or director. *Stacy v. Cherokee M. & M. Works*, 49 S. E. 223. On the other hand, and, it seems, by the weight of authority, in the absence of an express contract, or an express provision for compensation in the charter, statute, or by-laws, the services are presumed to have been rendered gratuitously. *Barril v. Col. Insul. & Water Proof Co.*, 50 Hun 257; and the president cannot recover on an implied contract when the services rendered were in performance of his official duties. *Beach, Priv. Corp.*, Sec. 208. The rule is analogous to that governing trustees generally, who, formerly at common law, were not entitled to compensation except as there

was warrant therefor in the contract or statute under which they acted. *Ellis v. Ward*, 137 Ill. 509. But the tendency now is to give trustees or other fiduciaries a reasonable compensation for services, without an express contract. *Bispham, Equity*, Sec. 144.

**CRIMINAL LAW—CONCURRENT JURISDICTION—FRAUDULENT ASSUMPTION OF JURISDICTION.**—*HARGIS ET AL. V. PARKER*, JUDGE, ET. AL., 85 S. W. 704 (Ky.).—A mortal wound was inflicted on decedent in one country and he died in another. This, under a state statute, gave the courts of either county jurisdiction to prosecute the offence. The persons accused of the crime fraudulently instigated the commencement of criminal proceedings against themselves in the former county. A magistrate of that county issued a warrant for their arrest, and bound them over to the circuit court of that county. These steps were taken with a view not to have a trial there, and to prevent a trial elsewhere. *Held*, that the circuit court of the county in which decedent died, on subsequently indicting such persons for the offence, had exclusive jurisdiction thereof, the proceedings before the magistrate in the county in which the mortal wound was inflicted being a nullity.

The rule that, in cases of concurrent jurisdiction, the court that first gets control of the subject matter will continue to exercise exclusive jurisdiction until judgment, is applicable to criminal cases. *United States v. Wells*, Fed. Cas. No. 16, 665. The court first obtaining jurisdiction will retain it, to the exclusion of the other court or county. *Ex parte Baldwin*, 69 Iowa 502; *State v. Williford*, 91 N. C. 529; *State v. Pauley*, 12 Wis. 537. But fraud vitiates every proceeding, where proof of fraud is admissible. *Greene v. Greene*, 2 Gray 361. Judgment, procured through fraud, in a civil action, can always be set aside. *Ocean Ins. Co. v. Fields*, 2 Story 59; *Freeman, Judgments*, Sec. 489—491; *Edson v. Edson*, 108 Mass. 590.

**CRIMINAL LAW—SUCCESSIVE OFFENSES—DOUBLE PUNISHMENT.**—*PEOPLE V. COLEMAN*, 79 PAC. 283 (CAL.).—*Held*, that an increase in the penalty on subsequent convictions of the same person for crime does not subject the accused to double jeopardy for his first offense.

The danger that prejudice of the jury may make such statutes a means of double punishment is illustrated by the remark of the court, *arguendo*, in *Comm. v. Hughes*, 133 Mass. 496, that the fact of prior convictions was "evidence" to be considered by the jury as bearing on the question whether the accused was guilty of the subsequent offense charged. So where the prior conviction is faultily alleged in the indictment, evidence to support such faulty allegation is not merely irrelevant to the other issues, but positively harmful as tending to prejudice the jury against the defendant. *Rand v. Comm.*, 9 Gratt. 738. Yet the courts agree that where a statute fixes an increased punishment for successive offenses, the prior convictions must be alleged in the indictment, and it is not necessary that such allegations and the proof thereof be kept from the jury till the accused has been found guilty of the later offense. *Maguire v. Md.*, 47 Md. 485.

**DAMAGES—MEASURE—TROVER.**—*MELOON V. READ*, 59 ATL. 946 (N. H.).—*Held*, that in trover the measure of damages is, in general, the value of the goods at the time of conversion.

In an action for non-delivery of goods in pursuance of a contract of sale the vendee may be allowed, as damages, the highest value up to the time of